IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

OP.No. 30307 of 2000(G)

PETITIONERS:
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1. **K. BALAKRISHNA PILLAI,**
   RASHMI, OLAYIL, KOLLAM.

2. **N. BALAKRISHNAN NAIR,**
   SOUPARNIKA, A-26, AISWARYA NAGAR,
   KESAVADASAPURAM,
   THIRUVANANTHAPURAM.

3. **K.M. VARGHESE,**
   ROSH KOTTAGE, THIRUMULLAVARAM,
   KOLLAM.

4. **K. MADHUSUDANAN NAIR,**
   SREEVARDHINI, KILIKOLLOOR.P.O.,
   KOLLAM - 4.

5. **K. PRABHAKARAN PILLAI,**
   SOORYA, THEVALLY, KOLLAM.

6. **C.G. BALACHANDRAN,**
   NADAM, THATTAMALA, KOLLAM.

7. **P.S. SATHYADEVAN,**
   THRIMOORTHY BHAVAN,
   KURUMANDAL, PARAVOOR,
   KOLLAM.

8. **A.K. VARGHESE,**
   ASWATHY, ASRAMAM NORTH,
   KOLLAM -2.

9. **V. GOPALAKRISHNAN NAIR,**
   VIJAYAMOHAN BUILDING,
   VADAYATHUKOTTA, KOLLAM-1.

O.P. NO. 30307/2000:

10. **P. KARUNAKARAN NAIR,**
MATTAKKATHU, PALACE WARD,
THEVALLY, KOLLAM.

11. **K. NARAYANAN UNNITHAN,**
SREELAKSHMI, OLAYIL,
KOLLAM.

12. **S.M. DEVADAS,**
DEVAGIRI,
THEVALLY,
KOLLAM.

13. **N.K. PRABHAKARAN NAIR,**
PRASANTHI, KOTTAKKAKOM,
KACHERI.P.O., KOLLAM.

14. **S. MALATHYKUTTY AMMA,**
KOOTHUNGAL, OLAYIL, KOLLAM.

15. **K. GOPINATHAN PILLAI,**
NJARAVILA VEEDU,
ULIYAKOVIL, KOLLAM.

16. **K. SIVARAMAKRISHNA PILLAI,**
LAKSHMI VILAS, OLAYIL, KOLLAM.

17. **N. KRISHNA PILLAI, RASHMI,**
THEVALLY, KOLLAM.

18. **N. KUTTAN PILLAI,**
PULAYIRAZHIKATHU,
VADAKKEVILA, ASHTAMUDI.P.O.,
KOLLAM.

19. **K. LAKSHMIKUTTY AMMA,**
KALEELIL VEEDU,
MATHILIL.P.O.,
KOLLAM.

20. **P. GOPIKKUTTAN NAIR,**
PRASADAM, MANGAD, KOLLAM.

21. **V.K. BHASKARAN,**
KULANGARA VEEDU,
THEVALLY, KOLLAM.

22. **P. PUSHPANGATHAN UNNITHAN,**
THRIPTHI, KAVANADU, KOLLAM.

O.P. NO. 30307/2000:

23. K.P. GOPINATHA PILLAI,
VRINDAVAN, EDAKKULANGARA.P.O.,
KARUNAGAPPALLY.

24. P. SARADAMMA,
RASHMI, THEVALLY, KOLLAM.

25. K.R. GANGADHARAN PILLAI,
GEETHANIVAS, THEVALLEY,
KOLLAM.

BY ADV. SRI.N.SUGATHAN,
SMT.R.SEEMA.

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY TO GOVERNMENT,
GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE PRINCIPAL SECRETARY TO GOVERNMENT,
FINANCE DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT. T.B. RAMANI.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 24/07/2007, ALONG WITH O.P. NO. 16327/1999, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 51434/2000 IN O.P. NO. 30307/2000

DISMISSED

24/07/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: STATEMENT SHOWING THE DEPT. AND THE POST FROM WHICH THE PETITIONERS RETIRED AND THE DATE OF THEIR RETIREMENT.

EXT.P.2: COPY OF THE OFFICE MEMORANDUM DTD. 27/10/1997 ISSUED BY THE CENTRAL GOVERNMENT.

EXT.P.3: COPY OF THE ORDER F. NO. 45/10/98-P&PW (A) DTD. 17/12/1998 OF THE CENTRAL GOVERNMENT.

EXT.P.4: RELEVANT EXTRACT OF THE STATE PAY COMMISSION REPORT, 1998.

EXT.P.5: COPY OF THE G.O. (P). NO. 3001/98/FIN. DTD. 25/11/1998 OF THE STATE GOVERNMENT.

EXT.P.6: COPY OF THE REPRESENTATION DTD. 05/05/2000 SUBMITTED BY THE P.1. TO THE R.1.

RESPONDENT'S EXHIBITS: **NIL.**

//TRUE COPY//

P.A. TO JUDGE

prv.

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.Nos.30307 OF 2000 & 16327 OF 1999

Dated this the 24th day of July, 2007

JUDGMENT

G.O.(P).No.3001/98/Fin. dated 25.11.1998 was issued by the Government of Kerala in relation to revision of pension and other related benefits consequent on revision of pay scales from 1.3.1997. The petitioners who retired from service of the State of Kerala before 1.3.1997 contend that the provision made in clause (3) of that Government Order, conferring on such beneficiaries only fitment benefits, is unconstitutional and results in hostile discrimination. In support of the contention, reliance is placed on the judgment in **D.S.Nakara and Others** v. **Union of India** (AIR 1983 SC 130), with particular reference to Para 42 thereof, which reads as follows:

> "If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle ? The classification has to be based,

> as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to Government servants then those who retired earlier cannot be worse off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory."

2. As of now, by G.O.(P) No.125/06 dated 17.3.2006, the Government appears to have extended the benefit of revision to persons like the petitioners also, though from a later point of time, from 1.4.2005. Accordingly, learned counsel for the petitioners contend that the case of the petitioners against clause (3) of G.O.(P).3001/98/Fin. dated 25.11.1998 should gain attention at least of the Government even if it were to be treated that the question arises is essentially in the realm of policy decision making process.

For the aforesaid reasons, these writ petitions are disposed of directing that if the petitioners make appropriate representations before the Government voicing all the grievances on the basis of the anomaly that they have to point out on the face of the aforesaid Government Order dated 25.11.1998, the Government will consider such representations and take final decision within an outer limit of eight months from the date of receipt of a copy of this judgment.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NOs.30307/00 & 16327/99

JUDGMENT

24TH JULY, 2007.

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